ATTACHMENT A

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BY

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
COUNTY OF ORANGE	SUPERIOR COURT DIVISION 13-CVS-1419
ALBERTA CURRIE, PARIS VAUGHN, CASSANDRA PERKINS, LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA and NORTH CAROLINA A. PHILIP RANDOLPH INSTITUTE INC., Plaintiffs, v. THE STATE OF NORTH CAROLINA, and THE NORTH CAROLINA STATE BOARD OF ELECTIONS, Defendants.	**ORDER ON PARTIES' MOTIONS FOR JUDGMENT ON THE PLEADINGS**

This matter, which originates in Orange County and has been designated as an "exceptional" case by the Office of the Chief Justice of the Supreme Court pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts, came on for hearing before the undersigned superior court judge at the January 30, 2015 Civil Session of Wake County Superior Court. The undersigned, a resident superior court judge of Wake County expressly assigned to this exceptional case by the Chief Justice of the Supreme Court in an Order issued on December 3, 2013, determined that Wake County would be an appropriate venue for this hearing, as the Chief Justice's aforementioned Order authorizes the presiding judge in an exceptional case "to hold such sessions of court as may be set...and other business as may be necessary and proper for the orderly disposition of the case...." This matter came on for hearing upon Plaintiffs' Motion for Judgment on the Pleadings filed on November 17, 2014 and Defendants' Motion for Judgment on the Pleadings filed on January 9, 2015. In each of their respective motions, the moving parties

expressly noted that their motion was filed pursuant to North Carolina Rule of Civil Procedure 12(c).

In their Motion for Judgment on the Pleadings, Plaintiffs contend that they are entitled to judgment on the pleadings as to their First Claim for Relief in their Amended Complaint filed on October 8, 2013, in that the photo identification requirement of the Voter Information Verification Act, as codified in North Carolina General Statutes Section 163-166.13 (1) creates an impermissible qualification on the right to vote, in violation of Article VI, Section 1 of the Constitution of North Carolina; (2) directly contravenes the plain language of Article VI, Section 1 of the Constitution of North Carolina; (3) extends the qualifications for voting as delineated in Article VI, Section 2 of the Constitution of North Carolina; and (4) is not otherwise authorized in Article VI of the Constitution of North Carolina. Defendants assert, in their Motion for Judgment on the Pleadings, that they are entitled to judgment on the pleadings on all of the six claims alleged in Plaintiffs' Amended Complaint, because the photo identification requirement (1) does not violate Article VI, Section 1 of the Constitution of North Carolina and case law authority does not support the claim; (2) does not violate Article I, Section 10 of the Constitution of North Carolina; (3) does not violate Article I, Section 11 of the Constitution of North Carolina; and (4) does not violate Article I, Section 19 of the Constitution of North Carolina and case law authority is contrary to Plaintiffs' contentions.

North Carolina General Statutes § 1A-1, Rule 12(c) states, in pertinent part, that after the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. In a motion for judgment on the pleadings, the trial judge is to consider only the pleadings and any attached exhibits. The trial judge is not to consider statements of fact in the

briefs of the parties. [EMPHASIS ADDED] Minor v. Minor, 70 N.C. App. 76, 318 S.E.2d, 865 cert den 312 N.C. 495, 322 S.E.2d 558 (1984).

In PLAINTIFFS' FIRST CLAIM FOR RELIEF in their Amended Complaint, Plaintiffs state the following preface:

> "The Photo ID requirement creates an impermissible qualification on the right to vote, in violation of the state constitution, Article VI, § 1."

Article VI, Section 1 of the Constitution of North Carolina states:

> "Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided."

As previously mentioned, both Plaintiffs and Defendants urge that their respective positions on this claim entitle that respective side to a judgment on the pleadings.

Judgment on the pleadings under N.C.G.S. § 1A-1, Rule 12(c) is not favored by the law, and the nonmovant's pleadings will be liberally construed. Huss v. Huss, 31 N.C. App. 463, 230 S.E.2d 159 (1976). Indeed, a motion for judgment on the pleadings is not favored by the courts; pleadings alleged to state no cause of action or defense will be liberally construed in favor of the pleader. RGK, Inc. v. United States Fidelity and Guaranty Company, 292 N.C. 668, 235 S.E.2d 234 (1977). Therefore, as judgment on the pleadings pursuant to N.C.G.S. § 1A-1, Rule 12(c) is not favored by the law, the pleadings must be liberally construed in the light most favorable to the nonmoving parties. Pipkin v. Lassiter, 37 N.C. App. 36, 245 S.E.2d 105 (1978). Judgment on the pleadings is proper only when the pleadings fail to present any issue of fact. Gammon v. Clark, 25 N.C. App. 670, 214 S.E.2d 250 (1975). When pleadings do not resolve all factual issues,

judgment on the pleadings is generally inappropriate. Ragsdale v. Kennedy, 286 N.C. 130, 209 S.E.2d 494 (1974).

Unlike State ex rel Van Bokkelen v. Canady, 73 N.C. 198 (1875) – emphasized in each of the current parties' respective motions and interpreted in starkly contrasting ways – in which the litigants agreed that "[t]he case was submitted for the decision of the Court upon the...facts agreed" (73 N.C. at 198-199) and what those facts represented in the joint submission of the stipulated issues and the operation of the law upon those facts (See 73 N.C. at 202; 73 N.C. at 226), in the instant case the moving parties disagree in their respective pleadings as to what the facts represent, thus rendering inapposite here the circumstances which undergirded the superior court judge's legal determination in Van Bokkelen due to the existence of a factual foundation harmoniously presented by the litigants. Based upon the principles well-established by North Carolina appellate law that judgment on the pleadings is not a favored resolution of legal controversies, that pleadings alleged to state no cause of action or defense will be liberally construed in favor of the pleader or nonmoving party and that judgment on the pleadings is generally inappropriate when the pleadings do not resolve all factual issues, both Plaintiffs' Motion for Judgment on the Pleadings and Defendants' Motion for Judgment on the Pleadings regarding Plaintiffs' First Claim for Relief are DENIED.

In PLAINTIFFS' SECOND CLAIM FOR RELIEF in their Amended Complaint, Plaintiffs make the following introductory statement:

> "Photo ID imposes a cost upon voters and violates Article I, § 10 of the state constitution."

Article I, Section 10 of the Constitution of North Carolina states:

> "All elections shall be free."

As earlier noted, Defendants desire judgment on the pleadings as to this claim of Plaintiffs.

Black's Online Legal Dictionary, 2nd edition (2015) defines the term "free" in several ways, with the pertinent meaning depending upon the context in which the word is used. As the term "free" is interpreted by Defendants for purposes of this motion, Black's definitions of the word "free" which are applicable here include "not subject to legal constraint of another;" "having power to follow the dictates of his own will; not subject to the dominion of another." Meanwhile, as the word "free" is construed by Plaintiffs for purposes of this motion, Black's definitions of the term "free" which are employable presently include "available to all citizens alike without charge;" "available for public use without charge or toll." The movant under N.C.G.S. § 1A-1, Rule 12(c) must show, even when viewing the facts and permissible inferences in the light most favorable to the nonmoving party, that he is clearly entitled to judgment as a matter of law. DeTorre v. Shell Oil Company, 84 N.C. App. 501, 353 S.E.2d 269 (1987).

Viewing the word "free" as utilized in the Constitution's Article I, Section 10 in the context that elections shall be "unconstrained," an evaluation of facts and permissible inferences in the light most favorable to Plaintiffs does not yield an outcome that the requirement of a photo identification to cast an election ballot renders the voter powerless to follow the dictates of his or her own will, or subject to the dominion of another. Likewise, couching the term "free" as employed in Article I, Section 10 in the mode that elections shall be "without charge," an analysis of facts and permissible inferences in the light most favorable to Plaintiffs does not spawn a conclusion that the requirement of a photo identification to cast an election ballot now creates anew some financial sacrifice upon a person's ability to vote, especially since a voter historically and inherently expends some measure of economic value – whether motor vehicle fuel, tire tread, transportation fare, shoe leather or simply time – within the framework of a free election in order to vote.

Defendants' Motion for Judgment on the Pleadings on Plaintiffs' Second Claim for Relief is GRANTED.

In PLAINTIFFS' THIRD CLAIM FOR RELIEF in their Amended Complaint, Plaintiffs preliminarily offer the following assertion:

> "Photo ID imposes a property requirement upon voters and violates Article I, § 11 of the state constitution."

Article I, Section 11 of the Constitution of North Carolina states:

> "As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office."

As already stated, Defendants contend that they should prevail by way of judgment on the pleadings regarding this claim of Plaintiffs.

While there appears to be no appellate case in North Carolina which construes the term "property" contained in Article I, Section 11 of the Constitution to connote personal property, the North Carolina Court of Appeals in the case of Texfi Industries v. City of Fayetteville, 44 N.C. App. 268, 261 S.E.2d 21 (1979) expressly recognized that while the Plaintiff-appellant in that action owned personal property and leased real property in the land annexation area at issue, it was the Plaintiff-appellant's real property interests as exemplified by its requirement to pay all real property taxes on the leased premises which brought the Plaintiff-appellant's property interests within the analysis of Article I, Section 11 of the Constitution of North Carolina for the purpose of determining whether or not the Plaintiff-appellant had a fundamental right to vote in the annexation referendum. The movant under N.C.G.S. § 1A-1, Rule 12(c) must show, even when viewing the facts and permissible inferences in the light most favorable to the nonmoving party, that he is clearly entitled to judgment as a matter of law. DeTorre v. Shell Oil Company, supra.

While there is a dearth of legal authority that personal property is embraced by the word "property" in the Constitution's Article I, Section 10, on the other hand there is clear appellate court recognition in Texfi Industries that the term "property" in said constitutional provision definitively means real property, with the appellate court declining the opportunity, despite the existence of conducive facts in the case, to include personal property in this construction of the word. Consequently, this trial court is bound by the application of the appellate guidance in determining that in viewing the facts and permissible inferences in the light most favorable to Plaintiffs, the requirement of a voter to possess personal property in the form of a photo identification does not constitute a property qualification which affects the right to vote or hold office. As a result, Defendants' Motion for Judgment on the Pleadings on Plaintiffs' Third Claim for Relief is GRANTED.

In PLAINTIFFS' FOURTH CLAIM FOR RELIEF in their Amended Complaint, Plaintiffs state the following preface:

> "Photo ID imposes a cost upon classes of voters and violates Article I, § 19 of the state constitution."

In PLAINTIFFS' FIFTH CLAIM FOR RELIEF in their Amended Complaint, Plaintiffs make the following introductory statement:

> "The Photo ID requirement creates an undue burden on the fundamental right to vote on equal terms, in violation of the Equal Protection Clause in Article I, § 19 of the State Constitution."

In PLAINTIFFS' SIXTH CLAIM FOR RELIEF in their Amended Complaint, Plaintiffs preliminarily offer the following assertion:

> "By implementing VIVA, the State purposefully discriminates against African-American voters by imposing a burden on the fundamental right to vote on equal terms, in violation of the Equal Protection

> and Due Process Clauses in Article I, § 19 of the State Constitution."

Plaintiffs' Fourth, Fifth and Sixth Claims for Relief all cite Article I, Section 19 of the Constitution of North Carolina as grounds for these allegations in their Amended Complaint. Article I, Section 19 states:

> "No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin."

For purposes of ease, practicality, consistency and conciseness, since these remaining claims of relief of Plaintiffs are all founded upon Article I, Section 19 of the Constitution of North Carolina, and since Defendants have grouped the three said claims of relief for discussion in their motion for judgment on the pleadings, the Court combines Plaintiffs' Fourth, Fifth and Sixth Claims for Relief for purposes of the motion.

As heretofore observed, Defendants seek judgment on the pleadings on these claims of Plaintiffs.

In their motion, Defendants heavily rely upon the United States Supreme Court case of Crawford v. Marion County Election Board, 553 U.S. 181, 170 L.Ed.2d 574 (2008) in their assertions that the highest court in the land has already ruled on claims arising in the State of Indiana which were virtually identical to Plaintiffs' claims in the case at bar, and determined such claims in a manner which is contrary to Plaintiffs' position in the current action. Assuming, arguendo, the correctness of Defendants' interpretation of the United States Supreme Court's decision in Crawford only for the purposes of this motion, the high court, in affirming the United

States Court of Appeals' decision emanating from the Seventh Circuit which had upheld the United States District Court Judge's decision to grant summary judgment, duly recognized and expressly referenced numerous resources to which the trial judge in Crawford had access beyond the case pleadings in rendering its decision after the completion of discovery (553 U.S. at 187, 170 L.Ed.2d at 581), such as evidence in the record (553 U.S. at 187, 170 L.Ed.2d at 581; 553 U.S. at 192, 170 L.Ed.2d at 584; 553 U.S. at 194, 170 L.Ed.2d at 586; 553 U.S. at 199, 170 L.Ed.2d at 588; 553 U.S. at 199, 170 L.Ed.2d at 589; 553 U.S. at 200, 170 L.Ed.2d at 589; 553 U.S. at 201, 170 L.Ed.2d at 590; 553 U.S. at 202, 170 L.Ed.2d at 590), deposition evidence (553 U.S. at 201, 170 L.Ed.2d at 589-590), an expert's report (553 U.S. at 187, 170 L.Ed.2d at 581; 553 U.S. at 200, 170 L.Ed.2d at 589), a newspaper article (553 U.S. at 196, 170 L.Ed.2d at 587) and at least one affidavit (553 U.S. at 201-202, 170 L.Ed.2d at 590). In a motion for judgment on the pleadings the trial court is to consider only the pleadings and any attached exhibits. Minor v. Minor, supra. Judgment on the pleadings under N.C.G.S. § 1A-1, Rule 12(c) is not favored by the law, and the nonmovant's pleadings will be liberally construed. Huss v. Huss, supra. Indeed, a motion for judgment on the pleadings is not favored by the courts; pleadings alleged to state no cause of action or defense will be liberally construed in favor of the pleader. RGK, Inc. v. United States Fidelity and Guaranty Company, supra. Therefore, as judgment on the pleadings pursuant to N.C.G.S. § 1A-1, Rule 12(c) is not favored by the law, the pleadings must be liberally construed in the light most favorable to the nonmoving parties. Pipkin v. Lassiter, supra. Judgment on the pleadings is proper only when the pleadings fail to present any issue of fact. Gammon v. Clark, supra. When pleadings do not resolve all factual issues, judgment on the pleadings is generally inappropriate. Ragsdale v. Kennedy, supra.

Crawford v. Marion County Election Board, supra is readily distinguishable from the present case based upon the critical procedural difference that the trial court in Crawford rendered its decision at the summary judgment phase of the litigation after discovery proceedings had yielded information for the jurist's contemplation – the likes of which the trial court in the case sub judice does not yet have the ability to access – in that such factual material is beyond the pleadings and cannot properly be considered on a motion for judgment on the pleadings, the Crawford decision was based upon the allowance of a motion for summary judgment rather than the earlier juncture of a motion for judgment on the pleadings where the current case is postured, and discovery proceedings in Crawford developed a pivotal trial court record of information of which the instant case is presently bereft. In light of these considerations, coupled with the application of the readily recognized doctrines that judgment on the pleadings is not a favored resolution of legal controversies, that pleadings alleged to state no cause of action or defense will be liberally construed in favor of the pleader or nonmoving party and that judgment on the pleadings is generally inappropriate when the pleadings do not resolve all factual issues, Defendants' Motion for Judgment on the Pleadings as to Plaintiffs' Fourth, Fifth and Sixth Claims for Relief is DENIED.

In sum, Plaintiffs' Motion for Judgment on the Pleadings on their First Claim for Relief is DENIED. Defendants' Motion for Judgment on the Pleadings on Plaintiffs' First, Fourth, Fifth and Sixth Claims for Relief is DENIED. Defendants' Motion for Judgment on the Pleadings on Plaintiffs' Second and Third Claims for Relief is GRANTED.

This 19th day of February, 2015.

Michael R. Morgan

MICHAEL R. MORGAN
SUPERIOR COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served on the parties listed below by mailing and/or hand-delivering a copy thereof to each of said parties, addressed, postage prepaid as follows:

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This, the 24th day of February, 2015.

Jamie Richardson
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